

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 374 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

CHUNILAL DHANABHAI

Versus

STATE OF GUJARAT

Appearance:

THROUGH JAIL for Petitioner

MR.RM CHAUHAN,APP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 19/06/98

ORAL JUDGEMENT

Rule. Mr. R.M.Chauhan, learned APP waives service of the Rule.

The petitioner has filed this petition for setting aside the order of punishment of deducting 934 days remission leave from his leave account and to issue necessary direction to the jail authority to grant furlough to the petitioner.

The petitioner convict, it appears, was granted parole for a period of seven days by the order dated 30th July, 1991 on account of the death of his mother. Thereafter the convict was granted some extension and was required to surrender on 23rd August, 1991. It appears that the convict did not surrender and on the contrary was apprehended by the police after 467 days. In his explanation before the jail authority he has stated that due to family circumstances inasmuch as there was nobody in his family to earn and maintain his family and that his father being an old person and more particularly he is blind who had remained consistently sick, the convict could not surrender. The jail authority ultimately passed the order directing deduction of 934 days remission leave from his leave account. It is this order which the petitioner has challenged in this petition.

It is true that the petitioner had remained out of jail unauthorisedly for 467 days and has therefore committed breach of the Parole Rules. Even if the petitioner had remained on unauthorised leave for genuine and justifiable reasons, he could not unilaterally take a decision to remain on unauthorised leave. The jail authority was, therefore, justified in imposing punishment. However, the impugned punishment appears to be excessive considering the facts and circumstances of the case. In any case, considering the facts of the case, the petitioner is sufficiently punished inasmuch as he is denied the remission granted by the State Government on account of 50th year of independence. Thus considering the facts and circumstances of the case, I think that the punishment imposed by the jail authority is required to be reconsidered.

In the result, this petition is partly allowed. The jail authority is directed to reconsider and take appropriate decision as far as the punishment of deducting 934 days remission from his leave account imposed on the petitioner is concerned in light of the observations made in this order. Rule is made absolute to the aforesaid extent with no order as to costs.

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